

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 22-01716-CJC (KESx)

Date: September 23, 2022

Title: XUAN GENG V. SHI CHE ET AL

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Rolls Royce Paschal
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

PROCEEDINGS: (IN CHAMBERS) ORDER TO SHOW CAUSE WHY THIS ACTION SHOULD NOT BE REMANDED

On September 19, 2022, Defendants Avioq, Inc., (“Avioq”) and Chamroen Chetty (“Chetty”) removed this action from the California Superior Court, County of Orange, invoking this Court’s diversity jurisdiction. (*See* Dkt. 1.) Avioq and Chetty allege in their Notice of Removal that Plaintiff Xuan Geng has not, or has not properly, served Defendants Shi Che (“Shi”) and Shandong Oriental Ocean Group Co. Ltd. (“SOOG”) and that Defendant Zhiyuan Che (“Zhiyuan”) has defaulted in state court. (*See id.* ¶¶ 4–6.) Avioq and Chetty then state that “[b]ecause Zhiyuan has defaulted and Geng has not served Shi or SOOG, their consent to removal is not necessary. 28 U.S.C. § 1446(b)(2)(A).” However, Avioq and Chetty do not cite in their Notice to any evidence substantiating that Shi and SOOG were not properly served or that Zhiyuan has defaulted. Further, it is unclear that the need for consent for removal under § 1446(b)(2)(A) from Zhiyuan is obviated even if Zhiyuan in fact defaulted, as that statutory provision states: “When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.”

Accordingly, the Court **ORDERS** Avioq and Chetty to **SHOW CAUSE** in writing, not to exceed **ten (10) pages** in length inclusive of all parts, and no later than **October 14, 2022**, why this action should not be remanded to California Superior Court, with particular attention to (1) proof of lack of proper service on Shi or SOOG and of

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default by Zhiyuan, and (2) the legal basis to believe that Zhiyuan's purported default in state court either constitutes consent to removal or obviates the need for Zhiyuan's consent for removal pursuant to 28 U.S.C. § 1446.

While Plaintiff is not obligated to file a response, should Plaintiff wish to do so, Plaintiff is **ORDERED** to file said response in writing, not to exceed **ten (10) pages** in length inclusive of all parts, and no later than **October 21, 2022**.

jso

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Initials of Deputy Clerk RRP